

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2508

Introduced by Assembly Member Bonilla

February 24, 2012

An act to add Chapter 3.7 (commencing with Section 12140) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Bonilla. Public contracts: public health agencies.

Existing law requires a state agency to comply with specified procedures in awarding agency contracts.

This bill would also prohibit ~~the California Health and Human Services Agency, the executive board of the California Health Benefit Exchange, a department under their purview, or a local government expending funds provided to those agencies, a state agency authorized to contract for public benefit programs~~ from contracting for call center services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and ~~a~~ any subcontract performed under that contract, will be performed solely with workers employed in California. This bill would authorize these agencies to waive this requirement, with the consent of the Controller, if certain conditions are met. This bill would also require the contract to include a clause for termination for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers outside of

California during the life of the contract. This bill would also specify that these provisions do not apply to an existing contract, as provided, or to a contract if the refusal to award that contract would violate the specific terms of federal trade treaties or bilateral or regional free trade agreements, as specified.

By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) The federal and state economies are recovering from the
3 great recession and California still has a high unemployment rate.
4 Millions of Californians are not working or working less than they
5 want and need full-time employment. California continues to allow
6 state public benefit *call center* contracts to be awarded to
7 contractors that perform the work outside the United States.

8 (b) By contracting and subcontracting outside of the country,
9 jobs are displaced in the United States and in California, and
10 taxpayer dollars are used to create jobs in foreign countries. State
11 tax revenues should be used to create jobs in the United States and
12 in California, especially when the taxpayer dollars are designated
13 for programs meant to create jobs and address problems associated
14 with joblessness.

15 SEC. 2. Chapter 3.7 (commencing with Section 12140) is added
16 to Part 2 of Division 2 of the Public Contract Code, to read:

17
18 CHAPTER 3.7. PROHIBITION OF THE OFFSHORING OF STATE
19 PUBLIC BENEFITS CONTRACTS
20

21 12140. (a) Notwithstanding any other law, ~~the California~~
22 ~~Health and Human Services Agency, the executive board of the~~

California Health Benefit Exchange, departments under the purview of those agencies, or a local government expending funds provided by those agencies any state agency authorized to enter into contracts for public benefits programs shall not contract for call center services for those public benefit programs, with a contractor unless that contractor certifies under penalty of perjury in his or her bid for the contract that the contract, or any part thereof, and a any subcontract performed under that contract, will be performed solely with workers employed in California.

(b) For purposes of this section, “local government” means a county, city, city and county, including a charter city or county, a special district, or any other local or regional government entity.

(c) Notwithstanding any other law, state funds for employment training shall not be allocated or expended to train employees located in foreign countries.

(b) For purposes of this section:

(1) “Call center” means a building, facility, or operation where customer or client services or assistance is provided by telephone, fax, email, text, or web-based interaction.

(2) “Public benefit programs” means California Work Opportunity and Responsibility to Kids (CalWORKs), CalFresh, Healthy Families, and the California Healthcare Eligibility, Enrollment, and Retention System.

(d)

(c) The contract shall provide that in the event a contractor or subcontractor performs the contract or the subcontract for call center services with workers outside of California during the life of the contract, the contract shall be terminated for noncompliance and the contractor or subcontractor shall pay a penalty to the state agency or local government in an amount equal to the amount paid by the state agency or local government for the percentage of work that was performed with workers outside of California.

(e)

(d) (1) A state agency or local government may waive the requirements of subdivision (a) for a particular contract, for a period not to exceed one year per waiver, if that state agency or local government submits a written finding to the Controller, and the Controller does not reject that finding within 30 days of receipt, that either of the following are true:

1 (A) The contract is necessary to respond to an emergency, as
2 determined by the state agency ~~or local government~~, for all of the
3 following reasons:

4 (i) The ability of the state agency ~~or local government~~ to provide
5 essential services would be adversely affected if the contract is
6 not performed.

7 (ii) The public health, safety, and welfare would be endangered
8 if the contract is not performed.

9 (iii) A contractor or subcontractor that has the ability to perform
10 the contract solely with workers within California is not
11 immediately available to perform the contract.

12 (B) The contract is necessary to provide a unique service, as
13 determined by the state agency ~~or local government~~, for both of
14 the following reasons:

15 (i) The state agency ~~or local government~~ deems as mandatory
16 the particular service to be performed under the contract.

17 (ii) Workers employed in California cannot adequately perform
18 the unique service to be performed under the contract.

19 (2) A state agency ~~or local government~~ that seeks a waiver under
20 paragraph (1) shall, at the same time that the entity provides the
21 written finding to the Controller, provide a copy of that written
22 finding to the Assembly Committee on Business, Professions, and
23 Consumer Protection, the Assembly Committee on Budget, the
24 Senate Committee on Governmental Organization, and the Senate
25 Committee on Budget and Fiscal Review.

26 (3) If the Controller rejects a written finding while the contract
27 is being performed or after the contract has been performed, the
28 contractor or subcontractor shall pay a penalty to the state agency
29 ~~or local government~~ in an amount equal to the amount paid by the
30 state agency ~~or local government~~ for the percentage of work that
31 was performed with workers outside of California.

32 (f)

33 (e) This section shall not apply to a contract if the refusal to
34 award that contract, on the basis that the contractor or subcontractor
35 does not certify under penalty of perjury that the contract and any
36 subcontract performed under that contract will be performed solely
37 with workers within California, would violate the specific terms
38 of the Agreement on Government Procurement of the World Trade
39 Organization or any other bilateral or regional free trade agreement
40 that California has consented to.

1 ~~(g)~~

2 (f) This section shall not apply to a contract, or subcontract,
3 currently in place, if it would result in a violation of the terms of
4 the contract, but upon expiration of that contract, these provisions
5 shall be added before a new contract can be executed or renewed.

6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

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